

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on March 7, 2001 at 3:10 P.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)
Sen. Ken Toole (D)

Members Excused: None.

Members Absent: None.

Staff Present: Melissa Rasmusen, Committee Secretary
Mary Vandenbosch, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 444, 3/1/2001
HB 332, 3/5/2001
HB 320, 3/1/2001
Executive Action: HB 125
HB 46

HEARING ON HB 444

Sponsor: REP. ROGER SOMERVILLE, HD 78, Kalispell

Proponents: Mike McGrath, Attorney General
Mark Simonich, Department of Commerce
Jim Flynn, Self
Bob Lane, Fish, Wildlife & Parks
Jeff Barber, Clark Fork Coalition
Jim Davison, Self

Opening Statement by Sponsor:

REP. ROGER SOMERVILLE, HD 78, Kalispell, opened the hearing by reading aloud from **EXHIBIT(nas52a01)** and **EXHIBIT(nas52a02)** overviews of the history of the ARCO lawsuit. He informed the committee that the point of the bill was to be able to pay for the next phase in the lawsuit against ARCO. He handed out a letter from **Judy Jacobson, Butte-Silver Bow, Chief Executive**, in support of the bill **EXHIBIT(nas52a03)**.

Proponents' Testimony:

Mike McGrath, Attorney General, informed the committee that the main portion of the funds borrowed for the lawsuit go to fund expert witnesses. The request for a loan from the Coal Severance Trust Fund, a line of credit, is something that has been previously granted. The state will not use the money unless they need it. He asserted that when the state borrowed money in the past for litigation they paid back every dollar plus interest. He speculated that there would be no problems paying the trust fund back. The lawsuit itself has a large economic impact on the state, particularly in the Upper Clark Fork River Basin. He informed the committee that the largest part of the litigation has been completed. The purpose of the litigation is for the restoration of Montana's natural resources.

Mark Simonich, Department of Commerce, told the committee that it is the choice of the Governor to bring forth the lawsuit. It is the Governor who makes the decisions about litigation and direction for the lawsuit. The program is located within the Department of Justice and coordinates closely with the Governor's office. He stated that there is a Natural Resource Damage Policy Advisory Committee that advises the NRD program during litigation. The bill ensures that there is funding to complete the litigation. The first part of the lawsuit ensured that the state was compensated for money that has been spent on litigation to date. He held that the purpose of the lawsuit is to restore Montana's natural resources. The Governor believes this is

something that will benefit all citizens. ARCO is bound by law to pay for the remediation.

Jim Flynn, Representing Himself, spoke in favor of the bill and submitted written testimony **EXHIBIT(nas52a04)**.

Bob Lane, Fish, Wildlife & Parks, spoke in favor of the bill and submitted written testimony **EXHIBIT(nas52a05)**.

John Tubbs, Department of Natural Resources, submitted written testimony in favor of the bill on behalf of **Sarah Carlson, MT Association of Conservation Districts**, **EXHIBIT(nas52a06)**.

Jeff Barber, Clark Fork Coalition, asserted the importance of restoring the Clark Fork.

Jim Davison, Representing Himself, spoke in favor of the bill and submitted written testimony **EXHIBIT(nas52a07)** along with an article **EXHIBIT(nas52a08)**.

Closing by Sponsor:

REP. Somerville, informed the committee that the House had a lengthy discussion about the bill on the floor. There was concern that the clean-up was not being done and that money was being wasted. He assured the Senate that the clean-up is being done and that the money has been spent wisely. He stated that when the settlement was reached between ARCO and Montana, the agreement stated that none of the funds received in the lawsuit could be used in future litigation. He added that the vote in the House was 85-13.

HEARING ON HB 332

Sponsor: REP. RICK DALE, HD 39, Whitehall

Proponents: Ronna Christman, MT Petroleum Marketers

Opening Statement by Sponsor:

REP. RICK DALE, HD 39, Whitehall, stated that the need for the bill is to replace and inspect aging fuel storage tanks. The inspection provision in the 1999 legislation was an important tool for the DEQ to complete their task. However, the legislation created a hardship for inspectors and tank owners.

{Tape : 1; Side : B Comments : REP. DALE's opening statement was interrupted in the middle}

The bill amends the language to improve the inspection process. He pointed out that the state of Montana only has 25-26 certified inspectors; some cannot conduct inspections because of their employer. The bill takes into account that there is a distance factor in Montana. It also helps with the expense and ensures that inspections will continue.

Proponents' Testimony:

Ronna Christman, MT Petroleum Marketers, exclaimed that there are 1,6000 sites that need inspections by January 1, 2002, less than 60 have been completed so far. Part of the problem is training and establishing a program. Last fall it was brought to their attention that a number of the inspectors would not be able to conduct the inspections because they had been involved in the installation or repair of a site. She stated that the tank owner has a limited choice of inspectors which increases their costs. Companies are required to conduct a tank tightness test. The inspector is liable to the tank owner and the state, they could potentially lose their license if something goes wrong after a tank has been inspected and deemed okay. She charged that with the language eliminating the person who actually conducted an installation that the conflict of interest would be taken care of. She submitted written testimony in favor of the bill on behalf of **Burl French, NW Fuel Systems, EXHIBIT(nas52a09)**.

Questions from Committee Members and Responses:

SEN. BILL TASH inquired if the bill would coordinate with HB 462 by **REP. JOHN WITT**. **Mrs. Christman** told him that the two bills sound similar, but they are two different issues.

SEN. GLENN ROUSH asked what happens when a tank changes ownership during the course of the three years. He questioned if the owner needed a new permit. **Sandy Olsen, DEQ**, informed him that unless the inspection was changed in some way the permit is valid.

Closing by Sponsor:

REP. DALE recounted that the goal of the bill was to ensure that there would be no compromise in the prevention of conflict of interest. He stated that there is still a willingness to prevent underground storage tank leaks.

HEARING ON HB 320

Sponsor: REP. RICK LAIBLE, HD 59, Victor

Proponents: Cary Hegreberg, MT Wood Products Association
Bud Clinch, DNRC
Don Allen, WETA

Opponents: Anne Hedges, MEIC

Opening Statement by Sponsor:

REP. RICK LAIBLE, HD 59, Victor, asserted that the bill was a clarification of existing law. He charged that the bill is about the fiduciary responsibility of the Land Board to exercise due diligence in maximizing the income off of school trust lands. School trust lands have a specific responsibility to protect their beneficiaries. The judiciary has failed to enforce the statutes established in the 1995 because of the confusion over whether it was the Land Board or the department that was wrongfully enjoined or restrained. He stated that the bill clarifies the responsibilities of the state to its beneficiaries. The existing language leaves open for interpretation whether or not the bonding requirements for payment of damages incurred by the trust beneficiary is the result of the Land Board or the department being wrongfully enjoined. He stated that the clarification to the code will strengthen Montana's commitment to public schools and encourage all parties to mediate rather than litigate. He declared that with the passage of the bill individuals would still be required to uphold the strict MEPA standards. He added that the bill will not take away an individual's right to due process.

Proponents' Testimony:

Cary Hegreberg, MT Wood Products Association, notified the committee that when HB 501 passed in 1995 he thought the problem was fixed. However, judges have been able to skirt the intent of the legislature, by indicating that they are enjoining the department rather than the Board of Land Commissioners. The bill states that if an injunction is sought a bond will be posted. The intent is to limit lawsuits. He charged that the Swan State Forest has had virtually no timber harvest over the past ten years, due to injunctions and lawsuits filed under MEPA. He stated that the land is school trust land, the timber on it would generate approximately two million dollars per year and employ 200 people. Instead companies are closing. The threat of a lawsuit has caused National Forest supervisors to withdraw timber sales that have gone through years of extensive study. He maintained that state trust lands do not want to fall victim to

lawsuits as federal lands have. He handed out a lawsuit as an example of what could happen with state trust lands

EXHIBIT (nas52a10).

Bud Clinch, DNRC, stated that the bill is not new legislation, it merely clarifies existing legislation. Since the passage of HB 501 in 1995 the department has been involved in five injunction lawsuits. In the lawsuits each case involved hundreds of thousands of dollars that were being temporarily deferred during this bond injunction. The injunction bond request was based on the lost interest earning during that time. He offered the example of the Ted Turner lawsuit. Those bonds were calculated by projected lost revenue. He hypothesized that if the plaintiff is successful in their litigation the bond would be refunded as well as the costs to secure it.

{Tape : 2; Side : A COMMENTS: MR. Clinch's testimony was interrupted}

He offered that it is his responsibility to make sure that full market value is achieved.

Don Allen, WETA, informed the committee that 22 associations make up the WETA membership. Those memberships represent not only timber, but oil, gas, mining and recreation. He pointed out that the bill is greater than the issue of timber sales; an injunction restraining order has far reaching effects.

Opponents' Testimony:

Anne Hedges, MEIC, handed out a copy of the Declaration of Rights **EXHIBIT (nas52a11)**. She charged that the current language is unconstitutional. She threatened that if the bill passes it will have to be struck down by the courts or ignored. She said that when the laws are not followed citizens do not have a channel of recourse with the agencies, they are forced to go to courts. People are forced to get an injunction so that projects, that are believed to be illegal will be stopped while the courts decide a reasonable course of action. She charged that this is not a federal issue, it is strictly dealing with the Montana Constitution. She then read aloud from numerous sections of exhibit 11. She concluded her remarks by arguing that the interest of justice must be required.

Questions from Committee Members and Responses:

SEN. KEN TOOLE inquired if the four lawsuits are in the same district. **Tom Butler, legal council DNRC**, informed him that they were. **SEN. TOOLE** questioned if the court cases had the same

judge. **Mr. Butler** told him that there were two different judges. **SEN. TOOLE** asked if there were other kinds of actions that are prevented from getting injunction relief. **Mr. Butler** told him the purpose of the bill is to make mandatory the submission of injunction bonds for the wrongful appeal. There are several other instances in MT law where that is required. He gave the example of the Strip Mine Reclamation Act. The act is mandated by federal law for those states that want to regulate their own coal mining. The requirement that you post an injunction bond before you seek district court of review is mandated by federal law for coal mining. Therefore there is a significant amount of litigation upholding the constitutionality of posting a civil penalty before you get a district court review. **SEN. TOOLE** wondered if there was a fundamental right of access to redress. **Mr. Butler** stated that the bill has the full constitutionality authority to require mandatory injunction bonds to protect the revenue stream from state trust lands. The state is constitutionally required to preserve that stream of revenue.

SEN. TOOLE inquired if there has been timber harvested in the Swan National Forest over the past ten years. **Mr. Hegreberg** informed him that there has been virtually none. He stated that the Swan could support a harvest of 10-12 million board feet per year, but only 2-3 million board feet has been harvested over the past ten years. **SEN. TOOLE** questioned if the entire Swan Valley State Forest was not being harvested. **Mr. Hegreberg** clarified that he was talking about the Swan State Forest specifically. There has been a harvest in other parts of the Swan. **SEN. TOOLE** asked if Pyramid Lumber had bid on any of the other timber sales. **Mr. Hegreberg** declared that he did not know. **SEN. TOOLE** asked if there were other companies who have been successful in the bidding process. **Mr. Hegreberg** told him that there were.

SEN. LORENTS GROSFIELD asked where the bill identified the legitimate state interest. **Mr. Butler** told him that it was a constitutional duty under Article 10 Section 3. **SEN. GROSFIELD** inquired about the constitutionality of lines 15-18 in the bill. **Mr. Butler** declared that the language is constitutional. **SEN. GROSFIELD** wondered if there have been any court cases that have dealt with that specific issue. **Mr. Butler** told him that no party has raised that issue. **SEN. GROSFIELD** questioned if line 13 implemented the duty of Article 10 Section 3 of the Constitution. **Mr. Butler** stated that the intent is the implementation of part of that section not all of it. He added that he did not see the section as problematic.

SEN. VICKI COCCHIARELLA asked why there is an immediate effective date associated with the bill. **REP. LAIBLE** informed her that the purpose was not to interrupt the immediate flow of existing legislation. She stated that she was not sure of the urgency. She questioned if it added expense. He told her that the existing bill just needs clarification and there is no fiscal note.

SEN. GROSFIELD questioned if there was something coming before the department that would require the immediate effective date. **Mr. Clinch** informed him that there was not.

Closing by Sponsor:

REP. LAIBLE stressed that the bill is a clarification of existing legislation. He added that since the bill has been in effect there has been no question of constitutionality. Bonding issues are not a big deal; they cannot be more than \$50,000.

{Tape : 2; Side : B}

He informed the committee that the six previous entities who have litigated have had more than enough money to bond. The companies have a large number of assets. He charged that it is the duty of the state to defend the assets of the state trust lands.

EXECUTIVE ACTION ON HB 125

Motion: **SEN. TOOLE** moved that **AMENDMENTS HB012501.AMV EXHIBIT(nas52a12)** BE ADOPTED.

Discussion:

SEN. TOOLE stated that he was concerned with the language because it opened the door to numerous interpretations.

SEN. TASH opposed the amendments because many of the items in question are an issue of natural occurrence.

SEN. MAX COLE wondered if the amendments were necessary. **SEN. TOOLE** informed him that it is important to establish a classification system that works issues out.

SEN. COLE called for the question.

Vote: Motion carried 6-4 with Crismore, Mahlum, Cole, Roush voting no. Role call vote **EXHIBIT(nas52a13)**.

Motion/Vote: SEN. TOOLE moved that HB 125 BE CONCURRED IN AS AMENDED. Motion carried 9-0.

SEN. KEN MILLER will carry HB 125 in the Senate.

EXECUTIVE ACTION ON HB 46

Motion: SEN. GROSFIELD moved that AMENDMENTS HB004601.AMV EXHIBIT(nas52a14) BE ADOPTED.

Discussion:

Ms Vandembosch stated that the purpose of the amendments were to make the language more uniform.

SEN. COLE called for the question.

Vote: Motion carried 9-0.

Motion: SEN. COLE moved that HB 46 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. TAYLOR stated that he was concerned with the idea of increasing the limit of construction contracts. He questioned if the current bid limit was \$50,000. SEN. GROSFIELD informed him that it was \$25,000.

Vote: Motion carried 9-0.

SEN. GROSFIELD will carry HB 46 in the Senate.

ADJOURNMENT

Adjournment: 5:00 P.M.

SEN. WILLIAM CRISMORE, Chairman

Melissa Rasmussen, Secretary

WC/MR

EXHIBIT (nas52aad)